



**MINUTES OF THE  
LAND RECLAMATION COMMISSION  
TELECONFERENCE MEETING**

March 7, 2003

Chairman Ted Smith called the meeting to order at 10:30 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

**Commissioners Present:** Ted Smith; Jim DiPardo; Mimi Garstang; Hugh Jenkins; Jim Hull; and Gerald Ross.

**Staff Present:** Larry Coen; Tom Cabanas; Mike Larsen; Bill Zeaman; Steve Femmer; and Shirley Grantham.

**Others Present:** Mary Bryan, Attorney General's Office.

1.     BARBER AND SONS QUARRY

It was noted that the company and petitioners were notified of this teleconference meeting and did not indicate an interest to participate.

Mr. Smith stated that the Commission passed a motion at their January 2003 meeting to table any action on granting of a permit to Barber and Sons, and subsequently any hearing, until the March 27, 2003, meeting. Following the January meeting, Barber and Sons sent out notices to all of the adjacent landowners, giving them 45 days to comment on their proposed permit. That 45-day period will end after the March 27, 2003, meeting. The question today is whether to take the issue off the table, reconsider it in any way, or just table it until a subsequent meeting after March 27 when any concerned citizens can be present. Mr. Smith asked staff if Barber and Sons sent that notice to everyone who owned land adjacent to, not the mine boundary, but the property boundary?

Mr. Coen stated the staff is aware that Barber and Sons sent out letters, but that they do not have copies of every one the company has sent a letter to.

Ms. Garstang asked what date is the 45-day comment period over?

Mr. Zeaman stated around April 4, 2003.

Mr. DiPardo made the motion to take the above issue off the table. Mr. Hull seconded; motion carried unanimously.

Mr. Ross asked if anything the Commission does today affects the start of the 45 days, would there be a further delay in the comment period or is it still running as of the date Barber and Sons sent letters out?

Mr. Coen stated the 45-day period was created by the company's own letter so the time period will be guided by that, regardless of what the Commission does.

Mr. Ross stated there is nothing the Commission can do today that changes that unless it chose not to entertain any letters that would come in during that time period.

Mr. Smith stated that is the reason the issue got tabled in January. There is a recommendation from the Staff Director that the Commission issue the permit to Barber and Sons. If the Commission did so, it would be ignoring the fact that letters were not sent to adjacent and contiguous property owners. That is the whole issue here. "Adjacent" and "contiguous" are not defined terms. That is why the issue was tabled at the January meeting because it was felt that any landowner that abutted to the property boundary should be notified.

Mr. Ross stated it was his understanding that if the issue was put back on the table, allow the 45-day period, the Commission is accepting the definition that if someone's property abuts the property where mining is occurring, the Commission is saying they should be notified.

Mr. Smith stated perhaps the Commission is not accepting that and saying that they need to be notified, but it is saying that that is the proper thing to do and would be the Commission's interpretation of the law. By tabling the motion and waiting until May, the Commission has, in essence, decided it will not take any issues until that public notice period is over. It would appear that the company has also accepted that decision.

Mr. DiPardo asked whether in May, if and when the above issue is again brought up, everyone would have been notified that should have been notified and the Commission can then either grant the permit or grant a hearing?

Mr. Smith stated that is correct.

Ms. Garstang asked whether waiting until May versus March would create a hardship on Barber and Sons?

Mr. Coen stated he was not aware of any hardships. There are some zoning issues that the company is working through at the local level, and the company really can't do anything until they get through those zoning issue.

Mr. Jenkins made the motion that the issue of the request for a hearing on the permit for Barber and Sons be tabled until the May Commission meeting. Ms. Garstang seconded; motion carried unanimously.

Mr. Hull asked as a result of the Commission's defacto decision, is there any procedure or guidance or regulation that needs to be changed relating to how public notification is required in this instance?

Mr. Coen stated the Industrial Minerals Work Group proposed rules that used the previous definition and which will now need to be changed. The Commission has already adopted the proposed rule, so the Commission will have to adopt a change to that proposed rule before it can be filed with the Secretary of State's Office.

Mr. Ross suggested that the Commission be provided with the language of the above proposed rule for its review.

2. OTHER

**Meeting on March 26, 2003, Regarding Proposed In-Stream Sand and Gravel Rules**

Mr. Ross stated it appears that there have been numerous hearings and work group activity and it seems that the most logical way to approach adopting regulations is to look at those proposals in total or as a package. If the Commission looks at them individually, there may be an early item that may be approved, and then later in the regulation, there may be an item that is not approved, which thus would impact other items in the package. It seems that there has been enough input that a package could be put together of what the total regulation would be based upon the input to come before the Commission and not need to have another session of discussion and public input. The Commission could adopt the set of regulations, if it wanted to take the preferred items out, or whatever package the Commission puts together, adopt a regulation, then it goes out in that format for the normal public comment through proposed regulations and possibly save the Commission another day of hearing the same comments.

Mr. Coen stated the notice for the March 26, 2003, public meeting on the in-stream sand and gravel rules has already been sent out.

Mr. Ross asked whether the staff could put together the best recommendation on the rules from the comments already received and prepare a set of regulations where they all fit together and the Commission could look at them in total and work through them as a starting point?

Mr. Coen stated that could be done. However, if the Program develops a rule package containing the rules with the highest vote, it will appear to be an industry package and that the environmental side was not represented.

Mr. Ross stated it seems that all of the input is there for the Commission, so now it is the Commission's and staff's roles to assemble what the regulation is. What will be the end product at the end of the March 26 meeting?

Mr. Coen stated he foresees the purpose of the March 26 meeting is not for one specific faction of our group, it is so the entire work group has an opportunity to meet with the Commission and present a package as best it could. Mr. Coen stated since the Commission has had an opportunity to read the information presented at the January 2003 meeting, what is hoped will happen at the March 26 meeting is a better discussion of the good and the bad points of all parts of this issue. If the staff is to put together a package presentation for the Commission, then he would recommend that an industry proposal package and an environmentalist proposal package be developed so that there is a balance of what the staff is showing the Commission.

Mr. Ross asked, after the Commission hears from all sides at the March 26 meeting, what will the staff provide to the Commission for action and when?

Mr. Coen stated the Commission could take action however they choose on March 26. He stated he would expect that the Commission would want to take the whole package under advisement and that action would not be taken until a future meeting.

Mr. Coen stated that in order for the Program to put together a new proposed rules package, the staff needs to know how the Commission is leaning on the various work group membership proposals so it knows how to write a proposed set of regulations.

Mr. Jenkins suggested that another option would be for the Commission to wait until the public comment period and then direct the staff to provide the Commission with a draft of the industry package and the environmentalist package. Then the Commission could review these and select either one or the other or a combination of the two.

Mr. Ross stated or, perhaps, the staff could prepare a package of the most workable set of the proposed regulations for the Commission's review.

Mr. DiPardo asked if the Commission on March 26 could ask that any new issues be heard and that the prior Minutes could stand as a record of the comments presented in the past?

Mr. Smith noted that the Commission could ask the public to speak to a specific issue in a rule, either in opposition or support of it.

Mr. Coen suggested that the Commission could state that it will hear discussion of the proposals from the work group and nothing else.

Ms. Bryan stated the Commission could certainly limit any comments from the public at the March 26 meeting to any new issues which have not been previously discussed.

Mr. Ross made the motion the meeting be adjourned. Mr. DiPardo seconded; motion carried unanimously.

The meeting ended at 11:05 a.m.

Respectfully submitted,

  
Chairman